

**OPINION
69-190**

April 14, 1969 (OPINION)

Mr. J. O. Wigen

Commissioner of Insurance

Insurance Department

RE: Insurance - Variable annuities - Right to issue

This is in response to your letter in which you make reference to an opinion issued to your office on January 15, 1968, relating to variable annuities. You then ask:

"Do foreign insurance companies have the right to issue group annuity contracts in North Dakota which provide for both fixed and variable benefits if they are permitted to write such contracts in their respective states of domicile and are authorized to do business in North Dakota?"

A foreign insurance company (corporation) authorized to do business in this state is required to comply with the North Dakota laws and is subject to the North Dakota laws and may engage in those activities which are permitted by the laws of this state, provided that the insurance company (corporation) is also authorized to engage in those activities by its charter or articles of incorporation. The articles of incorporation or charter merely set forth the activities such corporation may engage in and is an authorization from the stockholders, but such authorization cannot and does not supersede any state law.

The fact that a foreign insurance company (corporation) is authorized to engage in certain activities by its charter does not automatically authorize said corporation to engage in those activities unless the state law wherein the corporation is authorized to do business permits such activities. The activities of a corporation are governed by the charter and by the laws of the state wherein it is authorized to do business. However, in no event can the provisions of the charter or articles of incorporation override or supersede the provisions of state law.

If the State of North Dakota were to permit domestic insurance companies to engage in certain activities but prohibit foreign insurance companies from engaging in the same even if they were authorized to do business in this state, it would constitute unlawful discrimination. Unlawful discrimination in reverse would result if a foreign insurance company were permitted to engage in certain activities in this state but would prohibit domestic corporations from doing the same.

The foregoing comments relate to those activities which come within the jurisdiction of the State and State Insurance Commission.

The conclusions reached in the opinion issued January 15, 1968, apply

to both foreign and domestic corporations and in our opinion no distinction can be made.

HELGI JOHANNESON

Attorney General